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No. _____

IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1996

ROBERT LEE ASTON, for himself and
all other licensed attorneys who are similarly situated ,
Petitioner

V.

STATE OF MISSOURI , the Chief Justice and
all Associate Justices of the Supreme Court of Missouri ,
Respondents

ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT, STATE OF MISSOURI

PETITION FOR WRIT OF CERTIORARI

ROBERT LEE ASTON, Ph. D. , *pro se*
Attorney-at-Law
Georgia , Indiana , Virginia, Montana
Counsel of Record
P. O. Box 34
Elberton, Georgia 30635
(706) - 283-1337

QUESTIONS PRESENTED

1) Whether Missouri's Bar Admission Rule 8.10 , which offers admission without examination to licensed attorneys from states giving mutuality of admission , must treat all those licensed attorneys from reciprocity states equally and the same, without exception, provided they are in good standing , of good moral character, and have practiced law for five of the preceding ten years in the states where they are licensed ?

2) In any given state jurisdiction, are not all attorneys licensed to practice law equal in the eyes of the law in their courts and states , regardless of whether they graduated from an ABA-accredited or an unaccredited law school ?

3) Isn't Missouri's reason far less than a "compelling" reason, or less than a "substantial" or a "fair" reason for denying Petitioner Aston admission as a licensed attorney bar applicant from an unaccredited law school , but who has passed three different states' ABA-multistate bar exams , sufficiently ABA-bar-examination tested, and proven himself an equal of an ABA-accredited school graduate ?

4) Does Missouri's Bar Admission Rule 8.10(a)(1) offering admission without examination to all attorneys licensed from those states offering mutuality of admission , coupled with its Rule 8.10(a)(3) requiring that they be graduates of an ABA-accredited law school , violate the Equal Protection clause of the 14th Amendment of the U.S. Constitution by excluding and discriminating unfairly without

compelling or substantial reason against licensed attorneys graduating from non-ABA-accredited law schools and who have proved themselves the equal of accredited law school graduates ?

5) Is a state regulation that employs a suspect, or quasi-suspect classification , or impinges a sensitive personal right , or denies a benefit vital to the individual , or fundamental right of equal treatment under the Equal Protection Clause , entitled to a presumption of validity against attack by the rational test ? or, does it require strict or heightened scrutiny ?

6) Is a law which operates upon some persons and not upon others like situated or circumstanced or in the same class , invalid under the Equal Protection Clause ?

7) Has the Supreme Court of Missouri's Bar Admission Rule 8.10 offended the U.S. Constitution's Article IV, Sections 1 and 2 by not giving "Full Faith and Credit" to "the Public Acts, Records, and judicial Proceedings of every other State" by virtue of its specific offer to practice law in Missouri to licensed attorneys of Sister States giving mutuality of admission without examination , yet discriminates against a certain class of those Sister State's licensed attorneys ?

8) Whether Missouri is liable to Attorney Aston in denying pursuit of his legal profession under Title 42, § 1983 of the U.S. Code , or in violation of the Commerce Clause or any other Constitutional protection , by preventing or

inhibiting Aston from permanently moving his residence to Missouri to continue employment as a professor teaching Environmental and Mineral Resources Law at the University of Missouri-Rolla ?

9) Are not licensed attorneys , graduating from non-ABA-approved law schools , a suspect class of persons who have "experienced a ' history of purposeful unequal treatment ' or been subjected to unique disabilities on the basis of stereotyped characteristics not truly indicative of their capabilities " , e.g., inferiorily educated, and require strict scrutiny under the 14th Amendment ?

10) Does the Missouri reciprocity rule for bar admission without examination to licensed attorneys of Sister States offering mutuality of admission impugn and offend the attorney licensing rules of Indiana and Virginia who offer reciprocity without exclusion of unaccredited law school graduates to Missouri lawyers ? and , does the rule create a "suspect or quasi-suspect classification" of licensed and experienced attorneys inferior to other licensed attorneys ?

11) Should the reviewing of a non-accredited law school attorney bar applicant question, who is an American-born citizen , be less than the strict scrutiny test applied of an alien attorney who is not a graduate of an ABA-accredited law school. simply because alienage is involved ?

12) Is there a presumption of waiver of the Missouri rule that a licensed attorney and graduate of a non-ABA-approved law school under Rule 8.10(d) may be granted if the attorney's admission furthers the public interest ?

TABLE OF CONTENTS

	Page
QUESTIONS PRESENTED	i
TABLE OF AUTHORITIES	vi
PETITION FOR WRIT OF CERTIORARI	1
OPINIONS BELOW	1
JURSIDICTION	1
CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED	3
STATEMENT OF THE CASE	6
REASONS FOR GRANTING THE WRIT	11
I. To Correct A Discriminating Wrong That Will Remain Uncorrected And Injurious To A Class Of Attorneys In The United States Unless Relief Is Granted By This Court Of Last Resort	11
II. Creation Of A "Suspect" Class Of Licensed Attorneys As Second Class Citizen Attorneys	16
III. Missouri's Bar Rule Impinges Upon Sensitive Personal Rights Under The Privileges And Immunity Clause	19
IV. Laws Affecting Interstate Interests In Regulating Commerce and Environment Are A Growing National Concern Outweighing Missouri's Narrow State Bar Requirements	22
CONCLUSION	24
APPENDIX	25

TABLE OF AUTHORITIES

Cases — Page

Attorney General of Maryland et al v. Waldron, Md., 426 A2d 929 (1981)..... 19

Cornfield v. Coryell, 6 Fed.Case 546 (No.3230) C.D.E.D. Pa. 1823..... 15

Edelstein v.Wilentz, 812 F.2d 128, 132 (3rd Cir. 1987)..... 19

Galahad v. Weinshienk et al, 555 F.Supp.1201, 1206 (1983)..... 15

In Re Griffiths, 413 U.S. 717, 730 , 93 S.Ct. 2851 (1973)..... 17, 22

Massachusetts Bd. of Retirement v. Murgin, 427 U.S. 307, 313 , 96 S.Ct. 2562, 2566 , 49 L.Ed.2d 520 (1976)..... 18

McLaughlin v. Florida, 379 U.S. 184, 196 (1964)..... 17

Shenfield v. Prather, 387 F. Supp. 676 (1974)..... 20

Schumacher v. Justices of the Supreme Court of Pennsylvania , 965 F.2d 1262 (3d Cir.1992).....13, 19

Supreme Court of New Hampshire v. Piper , 470 U.S. 274, 281, 84 L.Ed.2d 205, 105 S.Ct. 1272 (1985)..... 19

Teare v. Committee on Admissions, 566 A.2d 23, 28 (D.C. App 1989)..... 14 , 15

United States v. Carolene Prods. Co., 304 U.S. 144, 153 (1938)..... 13

Weber v. Aetna Casualty and Surety Co., 406 U.S. 164,172-73, 92 S.Ct. 1400, 31 L.Ed.2d 768 (1972)..... 19

Statutory and Constitutional Provisions

Supreme Court of Missouri's Rule No. 8 Governing Admission to the Bar of Missouri , spec. Rule Number 8.10 of the Supreme Court (effective March 1, 1996)

U.S. Constitution, Article IV, §§ 1 and 2

U.S. Constitution, 14th Amendment, Equal Protection, Privileges and Immunities, and "federal citizenship " Clauses

U.S. Constitution, 5th Amendment , Due Process Clause

U.S. Consitution, Article 1, §8(3) ; the Commerce Clause

U.S.C.A. Const. Amend. 14; Const. Declaration of Rights, Art.24

U.S. Code , Title 42, § 1983

U.S.Code , Title 42 §4321 et seq., The Nat ional Environmental Policy Act, of 1969

PETITION FOR WRIT OF CERTIORARI

The Petitioner, Robert Lee Aston , Ph.D., a practicing and licensed attorney-at-law in good standing in the four States of Georgia, Indiana , Virginia and Montana , a member of the Bar of this Honorable Court , and a member of the Bars of the U.S. Courts of Appeals of the 4th, 7th, 9th and 11th Circuits , for himself and all other licensed attorneys in good standing in all the States and Territories of the United States , who are similarly situated , prays that a Writ of Certiorari issue by this Court to review the judgement and decision , rendered without opinion , of the Supreme Court of Missouri that was entered January 21, 1997 overruling Counsellor Aston's Petition for Waiver of a Bar Admission Rule 8.10(A)(3), and , on February 25, 1997 overruling his Petition for Reconsideration with Amended Argument to the Petition for Admission to the Bar of Missouri and the practice of law.

OPINIONS BELOW

The Supreme Court of Missouri gave no opinion , but offered only a simple Order "overruling" both of Aston's petitions .

JURISDICTION

Since the Missouri Board of Bar Examiners had advised Counsellor Aston that an application for admission to the Bar of Missouri would be denied if entered by Aston , submission of an application was futile and the $750 application fee lost. The Bar's hearing process provided by the Missouri Supreme Court Rule 8.12 would also have been

futile as the Board of Bar Examiners stated they were without authority to wave its Rule 8.10(a)(3) governing Aston's case .

Having exhausted all administrative remedies , the only recourse left to Aston was to submit a Petition to the Missouri Supreme Court.. Aston's petition for Waiver of Bar Admission Rule 8.10(A)(3) was denied by the Supreme Court on January 21, 1997. Nine days later, Aston submitted a petition for reconsideration and amended argument on his petition. This, too , was denied by the Missouri Supreme Court's order of February 25, 1997.

Petitioner Aston's sole , remaining remedy and hope for admission to practice law in Missouri lies with the discretionary review by Writ of Certiorari. to the Supreme Court of the United States .

The jurisdiction of this Court for review is invoked under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

1) The offending Court rule creating a discriminatory or unequal rule-application problem to licensed attorneys in this instance is that part of the Supreme Court of Missouri's Rules Governing Admission to the Bar of Missouri, viz., Rule Number 8.10(a)(3)

Rules Governing Admission to the Bar in Missouri,
Rule Number 8 of the Supreme Court
(effective March 1, 1996)

8.10 ADMISSION WITHOUT EXAMINATION

(a) A lawyer who has been admitted to the practice of law in another state or territory of the United States may be admitted in this state, without examination, if:

(1) The lawyer is licensed and has actively practiced in at least one jurisdiction that permits mutuality of admission without examination; and

(2) Has for five of the preceding ten years:

(A) Been engaged in the full-time practice of law in states or territories of the United States where the lawyer was licensed to practice; or * * *

(3) Is a graduate of a law school that at the time of the lawyer's graduation was approved by the American Bar Association; and * * *

(d) Admission without examination is not a matter of right but shall be granted only in those cases where the public interest, considering the character, education, extent and continuity of practice and ability of the applicant, is furthered by permitting such admission.

2) U.S. Constitution, Article IV, §§ 1 and 2

Section 1. Full Faith and Credit shall be given in each State to the Public Acts, Records, and judicial Proceedings of every other State. * * *

Section 2. [1] The Citizens of each State shall be entitled to **all** Privileges and Immunities of Citizens in the several States.

3) U.S. Constitution , XIV Amendment, Section 1 (Equal Protection / Privileges or Immunities, and "national citizenship" clauses; § 5 , the enabling clause ;

4) U.S. Constitution ,V Amendment , Due Process Clause ;

5) U.S. Constitution, Article I, § 8 (3), [Commerce Clause]

To regulate Commerce * * * and among the several States, * * * . ";

6) U.S. Code, Title 42, § 1983 :

Every person who, under color of any statute *** subjects, or causes to be subjected, any citizen *** to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.) Civil Rights Act of 1871, Ch.22, §1, 17 Stat . 13 (1871) [codified and amended at 42 U.S.C. § 1983 (1988)]

STATEMENT OF THE CASE

This case concerns the discrimination and unequal treatment of a Missouri Bar admission rule which lacks a truly compelling reason for being and is largely irrelevant to the State's achievement of its objective to maintain quality of its legal profession by distinguishing between licensed attorneys from reciprocity states . It is about the Petitioner Aston , an attorney in good standing and licensed to practice law in four of Missouri's sister states , who has successfully passed ABA-state bar examinations three times , but whose equal rights , guaranteed under the Constitution, have been contravened by the State of Missouri's Bar Admission Rule 8.10 , Admission Without Examination on his application to Missouri to practice law in that state.

Missouri offers its reciprocity rule to all licensed attorneys of other states whose states offer mutuality of admission without examination. However, a subsequent subsection of the Rule attempts to unfairly and unequally distinguish between those licensed attorneys of another state , permitting only a certain class to be admitted to the practice of law in Missouri. The offending Rule, therefore, unconstitutionally discriminates against a class of licensed attorneys to which an offer has been made.

Aston applied for admission under reciprocity with either of two states in which he is licensed to practice law, viz., Indiana and Virginia . Both states offer mutuality of admission to Missouri attorneys , but do not distinguish between licensed attorneys graduating from accredited or non-accredited law schools . Missouri offers reciprocity without examination , but does not give equivalent reciprocity to those two states.

Counsellor Aston argued on his Petition for Reconsideration and Amended Argument to the Supreme Court of Missouri that upon Missouri making an offer of admission without examination to licensed attorneys of another state , Missouri must make the same offer to all licensed attorneys and cannot constitutionally distinguish or discriminate between them so long as they are licensed to practice law in their respective states and in good standing.

During the academic year 1991-1992, while in residence at Rolla, Missouri, Counsellor Aston was an Adjunct Professor at the University of Missouri-Rolla (hereafter, UMR) teaching Environmental and Mineral Resources Law. Believing that more authority and prestige would be given to the University of Missouri law courses taught by Aston becoming a member of the Missouri Bar , Professor Aston inquired of the Missouri Bar for admission without examination. This belief that Aston's law course-teaching enrichened the University of Missouri System's curricula was supported in writing to the Board of Bar Examiners by Chancellor John Park and Dean Don L. Warner of the University of Missouri-Rolla.

In March 1992, Aston wrote the Bar Admissions office at the Supreme Court of Missouri regarding admission without examination. Aston received a reply from the president of the State Board of Law Examiners that he did not qualify because of his graduation from a non-ABA-approved law school and that the Board was unauthorized to waive the requirement.

After completion of the 1992 law class instruction at UMR, Aston placed the matter in abeyance while applying to the State of Virginia for admission in order to represent several mining companies. After a character report by the National Conference of Bar Examiners , Aston was admitted to the Virginia Bar and its highest court without examination by reciprocity with Indiana . Aston opened a law office in Virginia and has been involved in trial work in the courts of Virginia while maintaining a law office in Georgia. Subsequent opportunities to teach the same law courses at UMR and the St. Louis campus to Missouri attorneys and graduate engineers were offered by the University, but postponed until Aston petitioned the Supreme Court of Missouri for waiver of its rule excluding licensed attorneys of reciprocity states graduating from non-ABA-approved law schools.

On November 8, 1996, Counselor Aston filed a petition for waiver of Missouri's Bar Admission rule 8.10(a)(3). On January 21, 1997, the Supreme Court of Missouri entered an Order overruling Aston's Petition No. 79492. No opinion or reason for denial was made by the Court to Aston's pleadings. Within the allowable 30-days for appeal, Petitioner Aston filed a Motion for Reconsideration with Amended Argument on February 3, 1997 , On February 25 , 1997, the Missouri Supreme Court entered its Order on Petitioner's Motion for Reconsideration and Amended Argument as "overruled". Again, no reason was given by the Court. Petitioner does not know if his Petition for Reconsideration was read , or his motion simply denied.

The Federal question of Missouri's Bar Admission Rule's failure to give "Full Faith and Credit to the judicial Proceedings of every other State" and the " Citizens of each State shall be entitled to **all** Privileges and Immunities of Citizens in the several States" under Article IV, §§ 1 and 2 of the U.S. Constitution was argued in Aston's first petition submitted November 8, 1996.

The federal question of discrimination and unequal treatment of licensed attorneys who are offered reciprocity from other states being a violation of equal protection under the 14th Amendment was argued in Petitioner's Reconsideration and Amended Argument petition submitted January 31, 1997.

Five days before the expiration of the 90-day limitation to apply for a Writ of Certiorari from the Supreme Court of the United States for discretionary review of the Missouri Supreme Court decision, Aston requested and obtained an extension until July 25, 1997, from the Clerk of Court to petition for a writ.

This case involves an important question of equal rights and protection for licensed attorneys who are sworn to uphold the U.S. Constitution and to maintain and protect the equal rights of all citizens , yet are being denied equal rights and protection for admission without examination by the Missouri Bar's offer to licensed attorneys for admission and the practice of law .

This Missouri Bar rule not only offends the equal protection rights of all citizens , including lawyers , guaranteed by the Constitution of the United States, but several other parts of that same freedom guaranteeing instrument , one in

particular , " * * * a law which operates upon some persons * * *, and not upon others like situated or circumstanced or in the same class , is invalid." U.S.C.A. Amend.14; Const. Declaration of Rights, Art. 24

REASONS FOR GRANTING THE WRIT

I. TO CORRECT A DISCRIMINATING WRONG THAT WILL REMAIN UNCORRECTED AND INJURIOUS TO A CLASS OF ATTORNEYS IN THE UNITED STATES UNLESS RELIEF IS GRANTED BY THIS COURT OF LAST RESORT.

The Missouri Supreme Court's Bar Admission Rule, 8.03(a)(2) requires that law school students and graduates applying for their bar examinations must be graduates of an ABA-approved law school. That is not the offending and discriminatory issue challenged herein. Petitioner does not contest that a State may not set its own bar admission standards and rules which exclude graduates of a non-ABA-approved law school where the applicant has not yet been admitted to any state bar. Such a bar admission rule would probably pass muster . However, where Missouri makes an offer to licensed attorneys of other states for admission to its bar without examination , to be constitutionally valid under the equal protection assurances , it must make the same offer under a reciprocity exception to all licensed attorneys and must not discriminate or distinguish between them. Therein lies the constitutional infirmity of Missouri's rule , by not treating all licensed attorney bar applicants from reciprocity states equally. Petitioner argues that all licensed attorneys within any state are equals in the eyes of their state regardless of the type of law school they graduated from.

Petitioner realizes that this Court has been reluctant to interfere with the States setting their own bar admission rules ,

as long as they are not offensive to the Constitution. Thus , such a classification based on ABA-accredited law school graduation that are not licensed attorneys in any state would probably be permissible under the traditional equal protection test in that (1) the classification may be supported as rational; and (2) the classification furthers a proper governmental purpose, i.e., the rationale and purpose of excluding graduates of non-ABA-approved law schools is a presumed measure of lawyer-educated quality control. Even under the two-pronged strict scrutiny equal protection test, a compelling state interest is usually found. However, Missouri's quality-base presumption when applied to licensed attorneys who are equals in their states, fails in its purpose and is discriminatory.

Under the second prong of the strict scrutiny equal protection test , i.e., the least burdensome alternative available, Missouri's requirement of being an ABA-approved law school graduate to take the bar examination assumes the inferiority of all non-ABA-approved law school graduates to pass the examination, which leaves open a rebuttable presumption.

A rule allowing any and all law school graduate to take the state bar examinations would be the least burdensome and least offensive alternative. There are many non-ABA law school graduates that pass various state bar exams , which , in almost all states include the ABA multi-state bar exam, and are educationally and intelligently competitive with graduates of ABA-approved law schools. There are, also , many ABA-approved law school graduates that fail the bar exams. The non-ABA law school graduate that pass a state's bar exam may be fairly assumed to be the legally-educated equal of those ABA-approved law school graduates.

More pertinent to this challenge, however, once licensed to practice law in any state , the non-ABA and the ABA-approved law school graduates become equals before the law in those state and federal district courts of that state where they are licensed. Thus, Missouri's bar admission rule to admit only ABA-approved licensed attorneys fails and simultaneously denies non-ABA educated and licensed attorneys equal rights to practice law in Missouri which has offered to admit licensed attorneys from reciprocity states. For challenge authority, Petitioner refers to dicta in *Schumacher v.Justices of the Pennsylvania Supreme Court*, 965 F.2d 1262, 1272 (3d Cir. 1992) : " And even under rational basis review, 'the constitutionality of a statute predicated upon the existence of a particular state of facts may be challenged by showing to the court that those facts have ceased to exist. [*United States v. Carolene Prods. Co.*, 304 U.S. 144, 153 (1938)]."

Petitioner's constitutional challenge starts with the discriminating subsection of Missouri's Bar Admission Rules, 8.10(a), Admission Without Examination, subsections (1) and (2) which extend an offer to , and allows licensed attorneys from all other States and Territories of the United States tc be admitted to the practice of law in Missouri without examination, provided (1) they have practiced in at least one jurisdiction that offers mutuality of admission without examination; and (2) have for five of the preceding ten years been engaged in the full-time practice of law in states where licensed to practice. This requirement comports with the lawyer admission requirements of several other States and is not challenged herein by the Petitioner. Counsellor Aston has qualified under

both of those requirements. Aston is licensed to practice law in Indiana and Virginia , both of which are jurisdictions that permit mutuality of admission without examination to Missouri-licensed attorneys. Aston , for five of the preceding ten years, has been engaged in the full-time practice of law in states where he was licensed to practice. The offending and discriminatory Missouri rule enters the picture subsequently under 8.10(a)(3) which excludes a class of licensed attorneys.

Comity, Privileges and Immunities

It should be noted by this Court that Virginia , in offering reciprocity to Missouri's licensed attorneys without examination, does not require Missouri-licensed attorneys to be graduates of an ABA-approved law school. Thus , under Missouri's mutuality offer and rule, there is not strict equivalency of mutuality because of Missouri's added discriminating requirement of the licensed and experienced attorneys being only ABA-approved law school graduates. Being licensed in good standing with at least five years practice are Virginia's and Indiana's reciprocity requirements. Missouri's reciprocity rule and requirements are unequal with Virginia's and Indiana's. In *Teare v. Committee on Admissions*, 566 A.2d 23, 28 (D.C. App 1989), the converse of the court's statement was that if there is a "risk of conflict with or insult to another state" the full faith and credit clause would apply. Seemingly, the full faith and credit clause would be invoked.

The Privileges and Immunities clause of Article IV, § 2, serves to establish "a norm of comity *** that is to prevail among the States with respect to their treatment of each other's residents." In *Teare* , id. at 29, the court stated, " This provision prohibits a state 'from discriminating against citizens of other states in favor of its own." The first major case construing the language of Art. IV §2 in *Cornfield v. Coryell*, 6 Fed.Case 546 (No.3230) C.D.E.D. Pa. 1823 in which Justice Washington held the privileges and immunities of state citizenship to encompass those rights which are fundamental, including the ' right of a citizen of one state to pass through, or to reside in any other state, for purposes of trade, agriculture, *professional pursuits* or otherwise ." Id., 6 ed. Case at 552 (emphasis added). *Galahad v. Weinshienk et al*, 555 F.Supp.1201, 1206 (1983).

The Missouri bar admission rule at issue herein, offends a norm of comity by requiring graduation from an ABA-approved school for a licensed and experienced attorney and should be stricken for purposes of reciprocity.

However, the main constitutionally offending rule at issue before this Court is Missouri's unequal treatment and unequal protection of licensed attorneys from other states and territories of the United States to practice law in Missouri, is found under a subsequent subsection, i.e., 8.10(a)(3) , which excludes licensed attorneys that have graduated from a non-ABA-approved law school. Petitioner maintains that under the equal protection rights guaranteed by the 14th Amendment, that Missouri cannot discriminate between licensed attorneys from another state when offering mutuality of admission without examination. If Missouri offers reciprocity to licensed

attorneys of another state, it must offer the same admission without examination to all that State's licensed attorneys. It cannot distinguish or discriminate against a class of licensed attorneys. Under the equal protection clause of the 14th Amendment, it must treat them equally.

II. CREATION OF A "SUSPECT" CLASS OF LICENSED ATTORNEYS AS SECOND CLASS CITIZEN-ATTORNEYS.

Bar admissions rules, as here, Missouri's, and those of various similar states with similar requirements, have created a suspect, or at least a quasi-suspect , classification of licensed attorneys , viz., those graduating from non-accredited law schools.

Rightly or wrongly, non-accredited law school graduates have been discriminated against and stigmatized as being inferior to accredited law school graduates. This may or may not be a valid or perhaps even a "substantial " reason for states to maintain quality education standards for new, inexperienced attorneys applying for examination within their states.

However, that same reasoning should no longer be applied to or allowed for licensed attorneys having five or more years of law practice experience in their respectively licensed states. Once an unaccredited law school graduate passes the state bar examination and is licensed to practice law in his state, he is placed on an equal footing with those graduates of an accredited law school. In the eyes of their state law and courts the two are equal. The stigma of inferiority has been overcome

by the non-accredited law graduate demonstrating equivalent knowledge of law in passing the same bar examination as the accredited law school graduate. After a minimum of five years of law practice , one class of law graduates is indistinguishable from the other.

Nevertheless, whether they are five-year, or more, experienced equals in the practice of law and indistinguishable as licensed attorneys in their states, the discrimination and stigma as second class licensed attorneys continues as applied by some state bar admission rules. The stigma and discrimination takes the form of questionably legal deterrents, inhibitions and prohibitions to the exercise of certain freedoms of right under the Constitution. These "second class" licensed attorneys are wrongfully placed in a suspect class created by some state bar rules. As noted in *In Re Griffiths* , 93 S. Ct. 2851, 2856 (1973) : "The Court has consistently emphasized that a state which adopts a suspect classification 'bears a heavy burden of justification, ' " *McLaughlin v. Florida* , 379 U.S. 184, 196 (1964).

The general right of the states to administer and regulate their bars and admissions is not challenged herein. A challenge is made where there is undue and unwarranted discrimination by a state as described herein and this case of Aston. State bar regulation is not unfettered by the U.S. Constitution's equal protection clause and certainly is within this Court's field of interest to put an end to unjustifiable discrimination against a secondary class of licensed, experienced lawyers who have become , after years of

experience in the practice of law , the equals of accredited law school graduates.

This Court is asked to consider and to employ strict scrutiny review, and if not strict scrutiny, then at least a "heightened" degree of scrutiny than the rational test, for the discriminating treatment and exclusion of licensed attorneys, with five years minimum experience, applying for admission without examination to practice law in Missouri as a "suspect" class of persons. As defined by this Court , " A suspect class is a category of persons who have 'experienced' a ' history of purposeful unequal treatment' or been subjected to unique disabilities on the basis of stereotyped characteristics not truly indicative of their capabilities . " .[*Massachusetts Bd. of Retirement v. Murgin*, 427 U.S. 307, 313 , 96 S.Ct. 2562, 2566 , 49 L.Ed.2d 520 (1976)]. It appears to this Petitioner that second class licensed and experienced attorneys graduating from non-accredited schools fit the "suspect" category perfectly.

A decision is needed by this Court to overcome the discrimination against second class licensed attorneys with over five years experience but rejected simply because they are graduates of an unaccredited law school at some remote time in their past. The question that they may have been formerly inferiorily-educated graduates of such a school has been overcome. Only with this court's intercession , and only then, will the stigma and undeserved discrimination against second class, experienced, licensed attorneys created by various state bar regulations be stopped.

III. MISSOURI'S BAR RULE IMPINGES UPON SENSITIVE PERSONAL RIGHTS UNDER THE PRIVILEGES AND IMMUNITY CLAUSE

Quoting Justice Marshall in his dissent in *Weber v. Aetna Casualty and Surety Co.*, 406 U.S. 164,172-73, 92 S.Ct. 1400, 31 L.Ed.2d 768 (1972), "when state statutory classifications impinge upon sensitive personal rights, Court exercises stricter scrutiny balancing two factors : legitimate state interest promoted against personal right endangered ".

"This member of the Supreme Court advocates what has since be denominated by others to be the "sliding-scale" approach which, in the Justice's view, would end the histrionics engaged in by a court whose words bow to the two-tier orthodoxy yet whose actions recognize that not every non-suspect or non-fundamental right or interest is the same." *Attorney General of Maryland et al v. Waldron,* Md., 426 A2d 929 (1981)

Whether the profession of law is a protected right

It is noted that the U.S. Court of Appeals for the 3d Circuit stated that "the right to practice law is not a fundamental right for purposes of *** equal protection analysis." *Edelstein v. Wilentz*, 812 F.2d 128, 132 (3rd Cir. 1987). However, the 3rd Court of Appeals in footnote 9 of *Schumacher v. Justices of the Supreme Court of Pennsylvania*, 965 F.2d 1262 (3d Cir. 1992), noted in *Supreme Court of New Hampshire v. Piper* , 470 U.S. 274, 281, 84 L.Ed.2d 205, 105 S.Ct. 1272 (1985), this Court suggested "that the opportunity

to practice law is fundamental for the purposes of a Privileges and Immunities Clause analysis. Undeniably, the right to work, or to earn a living, has been held to be a fundamental right protected by the Constitution.

In *Shenfield v. Prather*, 387 F. Supp. 676 (1974), the court stated, "Classifications based on suspect criteria, ***, or which affect interests denominated as "fundamental ", call for strict judicial scrutiny and are constitutionally infirm unless demonstrably necessary to the promotion of a compelling state interest. ". Petitioner submits that Missouri's state interest in Aston's application for admission to the bar is less than "compelling".

An attorney, or similarly highly-trained professional, trained at great expense for education (frequently at self-sacrifice), and having spent years in his profession gaining experience along the way, may at a later date in his life wish to change residence to another state. He may find that a state bar's admission rules will prohibit his (1) right to travel in changing his residence to a state of his choice ; (2) to pursue his occupation of choice and long experience for which he is best fit ; and (3) other extenuating circumstances are denied, e.g., health, age, and family proximity in elderly years of life.

In Petitioner's case, the Missouri admission rules are discriminatory, excluding and prohibiting Aston to pursue his practice of law in a state in which he qualifies in all respects except for the unwarranted and now ancient, unrelated requirement of graduating from an accredited law school years ago.

Other protected rights of Petitioner impinged

Petitioner Aston is 73 years old, and too old to pursue extensive training for another profession (and, why should he have to ?) Petitioner is highly skilled, educated and trained in his law profession, and an attorney of some small national, and even small international prominence by virtue of his prolific publications in environmental and natural resources law. Aston is a member of the International Bar Association, the Australian Mining & Petroleum Law Association, and a graduate of a British university with a Ph.D. in engineering law. His doctoral dissertation was on U.S., U.K. and Canadian environmental laws and concerned surface mined land reclamation by landfilling with municipal solid waste. This field of law is of much current importance in the U.S.

Petitioner is in good health and has many years of fruitful service to the public as an environmental and natural resources law attorney. However, health is a personal concern in not being able to move his residence to Missouri . Because of the intense, unbearable mid-year temperatures and high humidity in Georgia, which Petitioner suffers from, he wishes to move his residence and law practice further northward to the hills of Missouri. Locating in Missouri is important to Aston because: the climate is cooler than Georgia ; he has a position on the faculty teaching environmental and natural resources law at the University of Missouri-Rolla ; UMR is his alma mater and he wishes to be located in his "golden years" in a university town ; his wife and he were raised in Missouri ; they want to be close to one of their married children and grandchild near Rolla, Mo.

Pursuit of these sensitive personal rights are inhibited, if not prohibited, by Missouri's bar admission rule excluding Aston from the practice of law in Missouri. Aston wishes to continue practicing in his chosen field of law and in spite of his advanced age does not want to retire.

Petitioner submits to this Court that it may be past time for a Uniform Code of Law Practice and Bar Admissions to be written, and for the Supreme Court to act on its formulation and enactment.

IV. LAWS AFFECTING INTERSTATE INTERESTS IN REGULATING COMMERCE AND ENVIRONMENT ARE A GROWING NATIONAL CONCERN OUTWEIGHING MISSOURI'S NARROW STATE BAR REQUIREMENTS

Mr. Chief Justice Burger noted in his dissent , *In Re Griffiths*, id. @ 730 , "In the rapidly shrinking 'one world' we live in there are numerous reasons why the States might appropriately consider relaxing some of their restraints on the practice of professions *** ".

Since the beginnings of our nation, interstate commerce has increasingly grown to such great proportions, and having transcended the boundaries of the individual states , the federal government has largely pre-empted the field. Interstate law is nearing a similar point of out-growing state boundaries as did commerce, and warrants a forthcoming Uniform Code for the practice of law and bar admissions.

The practice of law amongst the several States increasingly and intensely involves interstate commerce since the enactment of The National Environmental Policy Act, 1969 (NEPA), and the establishment of the EPA to administer the plethora of enabling acts, statutes and regulations in the fast-growing area of environmental law . Surface and ground waters, the flow of air, clean or polluted , are not restricted by state lines and are no longer matters confined to intrastate control of law. Even waste disposal has become interstate commerce. This area of law is one in which Petitioner Aston practices and instructs in law at the University of Missouri-Rolla.. Thus , the importance of this individual attorney's question challenging and seeking infirmity of Missouri's admissions reciprocity rule discriminating against him may have greater interstate and constitutionally compelling reasons for this Court to find those outmoded and unwarranted reasons infirm for denying Aston admission without examination to the bar of Missouri.

This case and question of interstate reciprocity for attorney bar admissions should be , not only of interest , but of great import to this Court under its "affectation doctrine" and within its permissible interstate commerce regulation in correcting a wrong effectuated by the Missouri discriminatory rule.

CONCLUSION

Unless Missouri's Supreme Court deletes from its Bar Admission Rules its discriminating requirement of licensed attorney applicants graduating from "a law school that at the time of the lawyer's graduation was approved by the American Bar Association", or is willing to offer, in good faith, to grant waivers without examination, to licensed attorney applicants graduating from non-accredited law schools who have five of the ten preceding years in full time law practice experience in their jurisdictions, thereby placing them on an equal basis with all other licensed attorneys of their respective states, an unwarranted suspect class of second class licensed attorneys has been created for a non-compelling reason by the Supreme Court of Missouri.

Respectfully submitted this 15th day of July 1997.

R. Lee - Aston

R. Lee Aston, Ph.D.
Attorney-at-Law,
Georgia, Ind., Va., Montana
Counsel of Record
P.O. Box 34
Elberton, Georgia 30635
(707) 283-1337

APPENDIX

ORDER OVERRULING ASTON'S PETITION,
January 21, 1997

CLERK OF THE SUPREME COURT
STATE OF MISSOURI
POST OFFICE BOX 150
JEFFERSON CITY, MISSOURI

THOMAS F. SIMON
CLERK

65102

TELEPHONE
(573) 751-4144

January 21, 1997

Mr. Robert Lee Aston
P.O. Box 34
Elberton, Georgia 30635

In re: Robert Lee Aston
Supreme Court No. 79492

Dear Mr. Aston :

This is to advise that the Court this day entered the following order in the above-entitled cause.

"Petitioner's petition for waiver of Rule 8.10(a)(3) overruled."

Very truly yours,

THOMAS F. SIMON
(s) Thomas F. Simon
Clerk

APPENDIX

ORDER OVERRULING ASTON'S MOTION FOR RECONSIDERATION WITH AMENDED ARGUMENT TO PETITION, FEBRUARY 25, 1997

CLERK OF THE SUPREME COURT
STATE OF MISSOURI
POST OFFICE BOX 150
JEFFERSON CITY, MISSOURI
THOMAS F. SIMON
CLERK
65102
TELEPHONE
(573) 751-4144

February 25, 1997

Mr. Robert Lee Aston
P.O. Box 34
Elberton, Georgia 30635

In re: Robert Lee Aston
Supreme Court No. 79492

Dear Mr. Aston :

This is to advise that the Court this day entered the following order in the above-entitled cause :.

Petitioner's motion for reconsideration of petition filed with amended argument to petition overruled ."

Very truly yours,

THOMAS F. SIMON
(s) Christina S. Vinson
Deputy Clerk, Court en Banc